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The Progress of Arbitration.

Dr. W. Evans Darby, the secretary of the Peace Society, London, presented to the recent London Conference of the International Law Association a valuable paper on the "Present Position of International Arbitration." Dr. Darby's well-known work, "International Tribunals," which has passed through several editions, received from F. W. Holls deserved recognition for its service to the committees in charge of the peace measures adopted by the first Hague Conference. Part of the paper presented to the London Conference has the detailed character of "Instances of International Settlements," which are to be found in the appendix to his book, and these instances serve to bring that work down to date.

The present digest of "Instances" is preceded by a list of treaties of peace, amity and commerce, made in the last half of the nineteenth century, in which were clauses providing for the reference of future disputes to arbitration. There were fifty-seven such treaties. The first of the series was a treaty of amity made between Belgium and Hawaii, October 4, 1862; the last was a general treaty of arbitration between Italy and the Argentine Republic, July 23, 1898. Of this list of treaties, Italy, leading all other countries, was a party to nineteen, Belgium to eleven, Switzerland to eight, Norway to six, Sweden to five, Siam to five and Great Britain to four. These are interesting as showing that a foundation was already laid for the system of arbitration treaties which grew out of the conventions of the first Hague Conference, and they mark a distinct period in the evolution of arbitration.

The information given by Dr. Darby has hitherto been rather difficult to obtain, because the various records are scattered through international documents that are inaccessible to the general student. Disappointment was felt when the Hague Conferences failed to make what is called "a world treaty of arbitration" applicable to all nations alike that are parties to it, and putting them under a single system; but, as Dr. Darby, speaking from long experience in the peace movement, rightly says, "Political change is slow, and international politics slowest of any." But though there was failure to make a world treaty, one hundred and thirty treaties of obligatory arbitration have been made by the nations in pairs since 1899, and there have already been fifteen or twenty renewals of those which had expired.

It is impracticable to reprint here from Dr. Darby's list the details of instances of international settlements by legal methods within late years, but a summary of his investigations shows that the Permanent Court of Arbitration has already tried eight of these cases, one of which was the Fisheries case. Of other cases previously reported to the meeting of the International Law Association as having been begun, eleven cases have lately been closed. There are still in process of settlement thirteen cases, and sixteen new cases of arbitration appear on the list. The Central American Court of Justice is already established and has tried one case. A second case submitted to it was declined because of lack of jurisdiction. The fact is,—and Dr. Darby's article bears out the observation,—that arbitration is going along so naturally nowadays that of many cases that are tried the

general reader hears as little as he hears of the ordinary cases that come before the United States Supreme Court.

Dr. Darby is in the habit of making carefully drawn distinctions when he writes, and he expects other students to do the same. He discriminates between a Court of Arbitration and a Court of Justice. The Court of Arbitral Justice, the plan of which was drafted by the second Hague Conference, was, according to his view, based on the principle of world federation, which implies limitations to national sovereignty. The failure of the nations to institute it may be superficially explained by saying that it was impossible to get an international agreement upon the method of appointing judges, but in reality it was due to the fact that the world was not ready for the application of the federative principle. Federation is as important as arbitration, but at present we can only do our best to educate the world up to it. We must not expect to realize it in its fullness. Arbitration, on the contrary, is based upon national freedom—freedom of the nations in the choice of judges to whom a case is voluntarily submitted by mutual agreement on the part of the nations concerned, the subject and terms of the reference being first defined by them and power given to carry out the award. "Destroy this," says Dr. Darby, "and it is no longer arbitration. In other words, arbitration is not justice in the technical sense, nor formal justice arbitration."

Dr. Darby notes the promise for the future of international justice as based upon the world federation idea, which the creation of the recent United States Peace Commission implies, and refers briefly to some of the statements made by Hamilton Holt on this subject; but he does not regard the commission as a finality. In discussing the proposition to invest the International Prize Court with the powers of the Court of Arbitral Justice, he adopts the view of the *ADVOCATE OF PEACE*, which gave warning of the danger of creating divisions and barriers among the nations by taking "the short cut" to achieve the end in view instead of the natural course of international evolution, in which all the nations act together instead of some forcing others into line. He impliedly criticizes the League of Peace idea, "with its purpose of preventing peace by war, which is so perilously akin to the jingo principle upon which modern civilization is based as to be scarcely distinguishable from it." He also doubts, though he does not strenuously oppose, the value of an international police. To his mind the peaceful administration of the world rests upon law and order, order as the result of law, rather than upon force. To use his own words, "The more intelligent a man is the more clearly does he see that questions of morals or of law cannot be settled by muscle, and that ethics cannot be determined by force. The world is making progress in ethics as well as in intelligence, and in the study of the science of government. There is more altruism to-day than ever before, and all the great forces of the world are working towards peace. The Hague Court is going to increase constantly in power and influence, and humanity will surely reach a time when the settlement of quarrels by war will seem as strange as the settling of questions some centuries ago by wager of battle instead of by legal decisions, as is the case in the present position of our civilization."